



April 17, 2002

Ms. Leah Simon
Assistant City Attorney
City of Waco - Legal Services
P.O. Box 2570
Waco, Texas 76702-2570

OR2002-1927

Dear Ms. Simon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 163716.

The Waco Police Department (the "department") received a request for offense report number 00-077640. You claim that the submitted information is excepted from disclosure pursuant to sections 552.103 and 552.108 of the Government Code. We have considered the exceptions you claim and have reviewed the submitted information.

We first address the department's statement in its letter to the requestor that sections 552.103 and 552.108 "prohibit" the disclosure of the requested information. Sections 552.103 and 552.108 are discretionary exceptions that protect the interests of governmental bodies, not third parties. *See* Open Records Decision Nos. 473 (1987) (section 552.103, the litigation exception, may be waived by a governmental body), 177 at 3 (1977) (section 552.108, the law enforcement exception, may be waived by a governmental body). Because sections 552.103 and 552.108 are permissive exceptions, a law enforcement agency may waive the exceptions and disclose the information to the public. Gov't Code § 552.007; *Birnbaum v. Alliance of Am. Insurers*, 994 S.W.2d 766 (Tex. App.-Austin 1999, pet. denied) (because section 552.112 is a permissive exception, state officials may reject the exception and disclose the information). Thus, these exceptions do not "prohibit" disclosure. We will consider the department's asserted exceptions.

Section 552.108 of the Government Code states that information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from required public disclosure "if release of the information would interfere with the detection, investigation, or prosecution of crime." Gov't Code § 552.108(a)(1). You inform us that the requested information pertains to a pending case. We therefore believe that the release of the information "would interfere with the detection, investigation, or prosecution of crime." *Id.*

However, section 552.108 is inapplicable to basic information about an arrested person, an arrest, or a crime. Gov't Code § 552.108(c). We believe such basic information refers to the information held to be public in *Houston Chronicle Publ'g Co. v. City of Houston*, 531 S.W.2d 177 (Tex. Civ. App.--Houston [14th Dist.] 1975), *writ ref'd n.r.e. per curiam*, 536 S.W.2d 559 (Tex. 1976). The department has release some information. However, the department has not released a detailed description of the offense, which is considered to be basic information. *Id.* Thus, with the exception of the basic front page offense and arrest information, you may withhold the requested information from disclosure based on section 552.108(a)(1).¹ We note that you have the discretion to release all or part of the remaining information that is not otherwise confidential by law. Gov't Code § 552.007.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

¹Generally, basic information may not be withheld from public disclosure under section 552.103. Open Records Decision No. 597 (1991).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Yen-Ha Le
Assistant Attorney General
Open Records Division

YHL/sdk

Ref: ID#163716

Enc. Submitted documents

c: Mr. Bobbie Wells
317 Dearborn Street
Waco, Texas 76705
(w/o enclosures)